THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.07.2007

\+ **WP (C) 1343/2007**

KAPIL GUPTA ...Petitioner

- versus -

UNION OF INDIA & ORS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr H.L. Tikku, Sr Advocate with Mr Anup Trehan, Mr Raghu Nayyar and Ms Sunaina Kapoor.
For the Respondent Nos3&5	:	Mr Amit Kapur with Mr Anupam Varma.
For the Respondent No.4	:	Mr Jos Chiramel with Mr R.K. Tripathi and Mr Deepak Agarwal.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is the proprietor of Delta Electronics which manufactures Compact Fluorescent Lamps (CFL). The petitioner is aggrieved by the fact that the manufacture of CFL) requires mandatory certification under Section 14 of the Bureau of Indian Standards Act, 1986 (hereinafter referred to as the BIS Act). The Bureau of Indian Standards has specified Indian Standard IS:15111 in respect of Self Ballasted lamps for general lighting services. These are the lamps which the petitioner manufactures and sells. Part-1 of IS:15111 pertains to safety requirements. Part-2 of the said IS:15111 pertains to performance

requirements. The petitioner has no issue with part-1 which relates to safety requirements. The petitioner is only aggrieved by the fact that in paragraph 13.2 of Part-2 of IS:15111, the average life of the lamps has been specified as not less then 6000 hours. According to the petitioner, this is arbitrary and requires to be struck off the said standard.

2. In this context, the petitioner has, *inter alia*, prayed that the notification dated 22.08.2005 issued by the Ministry of Commerce and Industry requiring mandatory certification under Section 14 of the BIS Act, be struck down insofar as it relates to Self Ballasted (with internal choke) CFLs as per IS:15111(Part 1 and 2). The petitioner has also prayed that the specification of 6000 hours life time under the said IS is arbitrary and should be removed from the said Indian Standards. The petitioner has also prayed that BIS standards be revised so as to bring it in harmony with the international standards specified by the International Electrotechnical Commission (IEC) which is a worldwide organization for standardization comprising of National Electrotechnical Commissions.

3. The petitioner contends that part-1 of IS:15111 is based on the IEC Standard specified in 60968 with regard to safety requirements. Similarly, part-2 of IS:15111 is based on IEC Standard 60969 in respect of performance requirements. Paragraph 13 of Part-2 of IS:15111 reads as under:-

> **"13 LIFE**
> **13.1** The life to 50 per cent failures (average life) measured on `n' lamps shall be not less than the rates life to 50 percent failures.
> (`n' is declared by the manufacturer or the responsible vendor, but shall be a minimum of 10 lamps.)
>
> **13.2** The average life shall not be less than 6000 h."

The corresponding paragraph in the IEC 60696 is as under :-

> "**10 Life**
> The life to 50% failure (average life) measured on "n" lamps shall be not less that the rated life to 50% failures.
>
> ("n" is declared by the manufacturer or responsible vendor, but shall be minimum of 20 lamps)"

4. Comparing the two provisions, it was contended on behalf of the petitioner that the international standard does not specify any minimum average life whereas the Indian standard specifies the minimum average life of 6000 hours by virtue of paragraph 13.2 of IS:15111 (Part-2). It was contended that since the Indian standard is admittedly based upon the International standard prescribed by IEC, the requirement of a minimum average life of 6000 hours is not in consonance with the International standard and, therefore, ought to be removed from the Indian standard. Referring to the foreword in Part-2 of IS:15111, the learned counsel for the petitioner submitted that the said Indian Standard (Part-2) was prescribed by the Bureau of Indian Standards after the draft finalised by Electric Lamps and their Auxiliaries Sectional Committee had been approved by the Electro-technical Division Council.

Furthermore, the standard was based on IEC 60969 (1988) "Self Ballasted Lamps for General Lighting Service Performance Requirements" issued by the IEC with certain modifications. It was contended that the modification did not include the prescription of an average life of 6000 hours.

5. The petitioner submitted that the requirement of a high average life does not, in any way, affect the safety or the performance of the lamp. According to the petitioner, if a lamp is rated for 3000 hours and it meets the 50% failure rate then it would be equally good, performance-wise, as a lamp which is rated for 6000 hours and which also has a 50% failure rate as prescribed under paragraph 13.1 of the IS: 15111 (part-2) He submitted that the cost and price of a CFL is proportionate to its average life. The lower the average life, the lower the cost and, the higher the average life, the higher the cost. By stipulating a minimum average life of 6000 hours entails that lamps below that rating cannot be manufactured and sold. It also means that cheaper lamps having lower life ratings would not be available. It was submitted in this context that a CFL with a 6000 hours rating would be priced at approximately Rs 120 per lamp whereas a CFL with a lower average life rating could sell as low as Rs 20 per lamp. Insofar as the consumption of electricity was concerned, there would be no difference because the CFL having an average life of 6000 hours or more would also consume 7 watts as would a CFL having an average life of, say, 3000 hours. It was also pointed out by the learned

counsel for the petitioner that normally a filament type bulb costs around Rs 10/- and its life is around 1000 hours . The power used is 25 watts and the light output is 200 lumens. On the other hand, a low cost CFL costing about Rs 20/- would have an average life of 3000 hours use only 7 watts of power. Therefore, there is clear conservation of energy in the case of a low cost CFL compared with a normal filament bulb. If the restriction of having minimum average life of 6000 hours is imposed, it would mean that the low cost CFL would not be available to the poor and middle class consumer inasmuch the CFLs having an average life of 6000 hours or more would, in the minimum, cost Rs 120/- per lamp. This is the argument that has been advanced on behalf of the petitioner to justify its stand that the imposition of a minimum average life of 6000 hours in the Indian Standards is unreasonable and arbitrary and does not, in any way, better serve the requirements of energy conservation.

6. It was contended by the learned counsel for the Union of India that initially a notification dated 17.02.2003 had been issued. By virtue of the notification, the Central Government, in exercise of the powers conferred under Section 14 of the BIS Act and after consulting the Bureau of Indian Standards, had notified the Electrical Wires, Cables, Appliances and Protection Devices and Accessories (Quality Control) Order, 2003 (hereinafter referred to as the "Control Order 2003"). By virtue of the said Control Order, 2003 there was a prohibition regarding manufacture, storage, sale, land distribution etc in

respect of electrical wires, cables, appliances, protection devices and accessories which do not conform to the specified Standards and do not bear the Standard mark of the Bureau on obtaining certification marks license. The expression electrical wires, cables, appliances, protection devices and accessories was defined in the Control Order, 2003 to mean items specified in column (2) of the Schedule. Serial Nos 8 and 9 of the Schedule pertain to self ballasted lamps for general lighting services IS:15111 (part 1 and part 2) respectively. Various representations were made from CFL Manufacturer's Association as it was felt that the standards prescribed for average life i.e., 6000 hours could not be tested within the prescribed period of six months allowed under the Control Order, 2003. Pursuant thereto, Items at serial Nos 8 and 9 pertaining to CFLs were deleted from the Control Order, 2003. According to the learned counsel for the Union of India, this was done with the understanding that the position would be reconsidered after 12 months so that the industry got sufficient time to establish the test procedure required for compliance with the standards. It is on reappraisal and after giving due consideration to the time required for the implementation of the Control Order, 2003, that the CFLs were again included for mandatory BIS marking by virtue of the issuance of the notification dated 22.08.2005 which the petitioner has impugned herein. It was also pointed out by the learned counsel for the Union of India that the notification dated 22.08.2005 re-introduced serial Nos 8 and 9 in the Control Order, 2003 but the same was not to come into effect

immediately and by virtue of the notification itself it was to come into force after 18 months from the date of its publication in the Official Gazette. The same was published on 22.08.2005 itself and, therefore, it would have become effective on or about 22.02.2007.

7. In the context of the aforesaid facts, it was submitted on behalf of the Union of India that the petitioner, who had established his factory in 2003, knew very well about the Standards. He was well aware of the initial Control Order, 2003. He was also aware of the withdrawal of Serial Nos 8 and 9 which pertained to CFLs and also the reintroduction by virtue of the amendment brought out on 22.08.2005. But the petitioner did not take any steps nor did he move any representation. Nor did the petitioner come to this court on the issuance of the notification dated 22.08.2005 which he is now impugning. The petitioner waited for the entire 18 months period and filed the writ petition a couple of days prior to the expiry of that period. The notification was to become effective on 22.02.2007 and the writ petition was filed on 20.02.2007. It was, therefore, contended that apart from the fact that the petition had no merit, the conduct of the petitioner also disentitled him to any relief.

8. On behalf of the respondent No.4 (Bureau of Indian Standards), Mr Jos Chiramel submitted that the standards were prescribed, *inter alia*, for

eliminating sub-standard Chinese imports from the Indian market. He made detailed submissions with regard to IS:15111. I need not to go into those details because of the view that I am about to take in this matter. Mr Chiramel referred to the affidavit filed on behalf of the BIS to indicate that the European Union has prescribed a minimum lamp life of 6000 hours for CFL. He submitted that other countries have also prescribed minimum standards. For example, Hong Kong has prescribed 8000 hours, Chinese Taipei has prescribed 8000 hours, Sri Lanka has prescribed 8000 hours. Therefore, the petitioner's allegation that the minimum life time of 6000 hours is arbitrary, is baseless. It was submitted by Mr Chiramel that the crux of the contention canvassed by the petitioner was that the low costs CFL being allegedly manufactured and sold by them as also the standard CFL with 6000 hours rating were equally energy efficient and, therefore, there ought to be no restriction on the former. According to him, energy saving was not the only criterion which was relevant for prescribing a minimum standard. He submitted that though the incandescent bulbs which had served the world for more than two centuries consume more energy and are being gradually replaced with CFLs, the waste disposal management and environmental concerns are much graver in the case of CFLs. Referring to the affidavit filed on behalf of the respondent No.4, he submitted that there are as many as 24 passive electronic components, besides mercury, holophosphate powder, lead etc used in the manufacture of CFLs which are not biodegradable and pose

serious environmental hazards. As compared to this, the only passive component in incandescent bulbs was a negligent amount of lead used in soldering. In this context, he submitted that use of lower life CFLs means a large number of CLFs being used and, therefore, a much larger waste disposal problem. Use of higher life CFLs means fewer lamps being used leading to fewer disposals and a lower effect on environment and ecology.

9. Mr Chiramel also submitted that The Electric Lamps and their Auxiliaries Sectional Committee (ET-23) of the Bureau is representative of various interest groups such as large and small scale manufacturers, associations representing such manufacturers, Government departments, research organizations, academic institutions, consumer groups and associations, bulk government purchasers etc. He submitted that ET-23 was constantly engaged in the improvement and upgradation of, *inter alia*, IS:15111 (Part-1 & Part -2). The said Committee, according to him, meets regularly and takes suggestions from members for improvement of the Indian Standards.

10. Concluding his arguments, Mr Cheramal submitted that the specification of standards is not done arbitrarily but is arrived at after several rounds of consultation with all concerned. Furthermore, the improvement in the Standards is an ongoing process and ET-23 meets for this purpose from

time to time. He submitted that these are matters which require expertise and the Bureau of Indian Standards is the expert body prescribed under the statute for specifying the Indian Standards for various products. Therefore, he requests that this court ought not to interfere in this matter.

11. The counsel for the respondent No.3 adopted the arguments advanced by the other respondents. The respondent No.5 (Bureau of Energy Efficiency) (BEE) filed a short affidavit. The affidavit was sworn by Mr G Pandian who had been the nominee of BEE on the BIS Sectional Committee known as ET-23 dealing with electric lamps and their Auxiliaries. It was contended that the BEE is a body corporate constituted by the Central Government, Ministry of Power to implement and enforce measures for efficient use of energy and its conservation under the Energy Conservation Act, 2001. It is stated in the affidavit filed on behalf of BEE (respondent No.5) that IS:15111 had been formulated by ET-23 and B15. It was further contended that, based on representations of the Industry Association, a meeting of the ET-23 Committee which, *inter alia*, oversees the standards of CFLs, was specifically convened on 05.03.2007 wherein the issue in question was tabled and is being considered. A copy of the notice of the meeting of the members of ET-23 dated 23.02.2007 was annexed and marked as annexure R-2 to the affidavit filed on behalf of the respondent No.5. The said annexure discloses that the ET-23 Committee is very broad based. It includes manufacturers, consumer

societies, Government experts and Government bodies dealing in energy efficiency and research, small scale industries as well as the Small Scales Lamps and Competent Manufacturer's Association apart from a host of other organisations. The said annexure also reveals that, in respect of IS:15111 (Part-2) (performance requirements), the industry and industry association had made representations to the Director General BIS regarding review of the life test requirement in the standard and that the same was under consideration of ET-23. It was submitted by respondent No.5 that in the light of the pending representation before ET-23, the writ petition is premature and may be dismissed.

13. From the above narration of facts and the stand taken by each of the parties, one thing that is clear is that the specification contained in an Indian Standards is a technical matter which requires specialised expertise. The Bureau of Indian Standards has been given the job by the BIS Act to carry out this function. It has based the standard in question on IEC 60968 and 60969 but it has thought it proper to bring in certain modifications including the modification of the average life requirement of 6000 hours. The arguments of the learned counsel for the petitioner may appear attractive from the point of view of a poor consumer but this has to be seen in the overall context of environmental concerns and protection of ecology. There may be other technical and scientific reasons which are not apparent at the moment and

which have not been referred to by the counsel for the parties both in support and against the fixation of a minimum average life of 6000 hours for CFLs. But, in my view it would not be appropriate to interfere with this decision at this stage by passing any direction in this writ petition. This is so because of three reasons. The first being that the petitioner knew about all the changes that have been brought about and neither made any representation to any of the authorities concerned nor approached this court for a long time. The notification was issued on 22.08.2005 and was to become operative after 18 months of its publication. The petitioner waited till the fag end of the 18 months period and filed the present writ petition just two days before the notification was to become effective. Secondly, and more importantly, the question of specifications in an Indian Standard is essentially a technical one. Courts do not have the experts to examine such technical issues and it is best left to experts unless some blatant irregularity or perversity is pointed out. In the present case, I find that there is no element of arbitrariness. There may be scope for debate on the issue but that does not enable this court to strike down the specification or a requirement under the Indian Standard merely because more views and one may be possible. Before such an action can be taken by this court in exercise of its jurisdiction under Article 226 of the Constitution, something more needs to be pointed out. That is not the case here. Thirdly, the very issue which the petitioner is agitating before this court is, as indicated by the respondents, under review by the ET-23 committee. It would, therefore,

be appropriate that the point of view of the petitioner is also placed before that Committee and it would be for them to suggest any changes if at all.

With these observations, this writ petition is dismissed.

No costs.

BADAR DURREZ AHMED
(JUDGE)

July 04, 2007
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